CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

March 18, 2005

H.R. 29
SPY Act

As ordered reported by the House Committee on Energy and Commerce on March 9, 2005

SUMMARY

H.R. 29 would prohibit the use of computer software (known as spyware) to collect personal information and to monitor the behavior of computer users without a user's consent. The Federal Trade Commission (FTC) would be directed to enforce this bill's provisions relating to spyware, including assessing and collecting civil penalties for unfair or deceptive business practices. (Civil penalties are recorded in the federal budget as revenues.) Based on information provided by the FTC, CBO estimates that enacting H.R. 29 would not have a significant effect on revenues and would not affect direct spending. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would increase spending subject to appropriation by about $1 million in 2006 and about $7 million over the 2006-2010 period.

H.R. 29 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

H.R. 29 would impose private-sector mandates as defined in UMRA on persons who use computer programs to collect certain information from another person's computer. Based on information provided by industry and government sources, CBO expects that the direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 29 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars					
	2005	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	1	1	1	2	2
Estimated Outlays	0	1	1	1	2	2

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the end of 2005. We also assume that amounts needed to implement H.R. 29 will be appropriated for each year and that outlays will follow historical trends for similar programs. Enacting H.R. 29 could increase federal revenues from civil penalties assessed for committing unfair or deceptive acts or practices in commerce, however, based on information provided by the FTC, CBO estimates that any new collections would be less than $500,000 a year.

Implementing the bill would increase spending by the FTC for law enforcement related to spyware, subject to the availability of appropriated funds. Based on information from the agency, CBO estimates that such activities would cost about $1 million 2006 and about $7 million over the 2006-2010 period.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 29 would preempt state laws in at least one state that prohibit the use of spyware and establish penalties for violators. This preemption constitutes a mandate as defined in UMRA. Although states may incur some costs from enactment of this provision, CBO estimates that such costs would fall significantly below the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation). The bill also would preserve the rights of states to enforce their own consumer protection laws.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 29 would impose private-sector mandates as defined in UMRA on persons who transmit information-collection programs to or execute them on another person's computer. Based on information provided by industry and government sources, CBO expects that the direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Section 3(b) would require persons to provide a notice and obtain authorization from the owner or authorized user of a computer before installing an information-collection program. An information-collection program is defined in the bill as computer software that collects personally identifiable information and either sends that information to a person other than the owner or authorized user of the computer or uses such information to deliver advertising to, or display advertising on, the computer.

Under the bill, the notices sent before installation of information-collection programs must comply with guidelines set forth in the bill and additional requirements to be determined by the Federal Trade Commission. Such notices would have to be clear and conspicuous and contain language specified in the bill. The notices also would have to allow users the opportunity to grant or deny consent for installation or to abandon or cancel the transaction without granting or denying consent.

Section 3(d) would require providers of information-collection programs to include certain functions in their software. Under the bill, such programs would have to have the ability to allow a user of the program to remove the program or disable operation of the software easily. The bill would require additional functions for certain information-collection software that delivers or displays advertising. If the software displays an advertisement when the computer user is accessing a Web page other than that of the software provider, the software would have to identify itself as the source of advertising that it delivers.

The mandates in this bill would represent only marginal changes beyond what companies are required to do under current law. Most software installations already have notification and consent subroutines. An additional notification would thus not impose a large cost on most companies, although some companies that currently do not include such notifications may incur some costs. Similarly, most computer programs already have features that allow users to uninstall them. Ensuring that the uninstall features are user-friendly would entail no great effort. The few companies that have no such features at present would incur some costs. Lastly, Web browsers are designed to display pictures and notices. Requiring that programs identify themselves when displaying an advertisement within a browser would impose little additional cost on companies that design such software. Consequently, CBO expects that the aggregate direct cost of complying with the mandates in this bill would not be substantial.

ESTIMATE PREPARED BY:

Federal Costs: Melissa E. Zimmerman
Impact on State, Local, and Tribal Governments: Leo Lex
Impact on the Private Sector: Jean Talarico and Philip Webre

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis